# Before the Administrative Hearing Commission State of Missouri



LAMINATION SERVICE, INC.,	)	
Petitioner,	)	
vs.	)	No. 14-1751 RS
DIRECTOR OF REVENUE,	)	
Respondent.	)	

## **DECISION**

We dismiss the complaint filed by Lamination Service, Inc. (LSI), because we lack jurisdiction to hear it.

#### **Procedure**

On November 3, 2014, LSI filed a complaint appealing a final decision of the Director of Revenue (the "Director"). The Director filed a motion for summary decision on November 18, 2014. We gave LSI until December 4, 2014 to respond to the motion. LSI did not file a response.

This Commission may grant a motion for summary decision if the Director establishes facts that entitle her to a favorable decision and LSI does not genuinely dispute those facts.<sup>1</sup>

Parties may establish facts by admissible evidence, including a pleading of the adverse

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<sup>&</sup>lt;sup>1</sup> 1 CSR 15-3.446(6).

party or other evidence admissible under the law.<sup>2</sup> We make the following findings of fact based on the pleadings and the affidavit accompanying the Director's motion.

## **Findings of Fact**

- 1. The Director informed LSI of her final decision to impose use tax, additions to tax, and statutory interest by certified mail on August 24, 2014.
- 2. On November 3, 2014, LSI filed a complaint with this Commission, appealing the Director's final decision.
  - 3. November 3, 2014, was more than sixty days after August 24, 2014.

#### **Conclusions of Law**

The Director argues LSI's complaint is untimely under § 144.261,<sup>3</sup> which establishes the limitations period for this action:

Final decisions of the director under the provisions of this chapter are reviewable by the filing of a petition with the administrative hearing commission in the manner provided in section 621.050, RSMo; except that, notwithstanding the provisions of section 621.050, RSMo, to the contrary, such petition must be filed within sixty days after the mailing or delivery of such decision, whichever is earlier.

The statute required LSI to file an appeal within sixty days of the mailing of the Director's final decision. The decision letter was mailed on August 24, 2012. Sixty day from that date was October 23, 2012. LSI filed its complaint over two years out of time.

The untimely filing of LSI's complaint deprives us of jurisdiction to hear it. 4 If we have no jurisdiction to hear the complaint, we cannot reach the merits of the case and can only exercise our inherent power to dismiss.<sup>5</sup>

<sup>5</sup> Oberreiter v. Fullbright Trucking, 24 S.W.3d 727, 729 (Mo. App. E.D. 2000).

<sup>&</sup>lt;sup>2</sup> 1 CSR 15-3.446(6).

<sup>&</sup>lt;sup>3</sup> RSMo 2000.

<sup>&</sup>lt;sup>4</sup> Community Fed. Sav. & Loan Assoc. v. Director of Revenue, 752 S.W.2d 794, 799 (Mo.), cert. denied, 488 U.S. 893 (1988); Springfield Park Cent. Hosp. v. Director of Revenue, 643 S.W.2d 599, 600 (Mo. 1984).

# **Summary**

We grant the Director's motion and dismiss LSI's complaint.

SO ORDERED on December 24, 2014.

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SREENIVASA RAO DANDAMUDI Commissioner